



Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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Submitted Via U.S. Mail and Electronic Mail

Dave Kirn
Regional Water Quality Control Board,
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670-6114
dwkirn@waterboards.ca.gov

**Re: Comments on the Tentative Order for the City of Live Oak
Wastewater Treatment Plant**

Dear Mr. Kirn:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit these comments on the tentative waste discharge requirements for the City of Live Oak (City) Wastewater Treatment Plant (Tentative Order). CVCWA is a non-profit organization that represents its members in regulatory matters that affect surface water discharge and land application with a perspective to balance environmental and economic interests consistent with the law. As such, we have concerns with the application of the state Sources of Drinking Water Policy (Resolution No. 88-63) and water quality-based effluent limitation (WQBEL) for arsenic in the Tentative Order. For the reasons provided below, we request that the Tentative Order be revised to reflect that the agricultural drain to which the City discharges is not designated for the municipal and domestic supply (MUN) use. We also request that the WQBEL for arsenic be expressed as an annual average limitation and a corresponding compliance schedule included in the Tentative Order.

A. Resolution No. 88-63 Is Being Improperly Applied to the Agricultural Drain; No Basin Plan Amendment Is Required to Apply the Exceptions in Resolution No. 88-63

The Tentative Order represents a new interpretation of the beneficial uses of the receiving waters, resulting in application of the MUN designation *under Resolution No. 88-63 for the first time* to the agricultural drain to which the City discharges. (Tentative Order at pp. 5, F-15.) The Tentative Order recognizes that Resolution No. 88-63 exempts from the MUN designation water in systems designed or modified to convey or hold agricultural drainage waters. (*Ibid.*) However, the Tentative Order incorrectly concludes that the Central Valley Regional Water Quality Control Board (Regional Water Board) must amend the water quality control plan for the Sacramento and San Joaquin River Basins (Basin Plan) to grant the exception in this case. (*Ibid.*) As a result, the Tentative Order inappropriately includes effluent limitations not in the previous permit to protect a nonexistent MUN use. (*Id.* at p. F-15.) As subsequently explained, the exceptions to Resolution No. 88-63 are self-implementing. The Regional Water Board need only find that the exception for agricultural drainage applies to exclude requirements in the Tentative Order related to the MUN designation.

1. Resolution No. 88-63 Exempts the Agricultural Drain to Which the City Discharges From the Generally Applicable MUN Designation

Resolution No. 88-63 provides that all surface waters and groundwater are suitable or potentially suitable for the MUN use and the Regional Water Boards should designate them as such with certain exceptions. (Resolution No. 88-63 at p. 1.) One such exception is where:

The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards. (*Id.* at p. 2.)

Therefore, waters that meet the exception for agricultural drainage are not part of the class of surface waters or groundwater subject to a MUN designation. The agricultural drain to which the City discharges qualifies for the exception to the blanket designation of MUN to surface waters.

2. The Basin Plan Requires Case-By-Case Consideration of Beneficial Uses and Incorporates the Exceptions to MUN Designations Under Resolution No. 88-63

The Beneficial Uses chapter of the Basin Plan recognizes that it is impractical to list the beneficial uses of every surface water body in the region. (Basin Plan at p. II-2.00.) As a result, the Basin Plans states: "For unidentified water bodies, the

beneficial uses will be evaluated on a case-by-case basis.” (*Ibid.*) In addition, the chapter incorporates Resolution No. 88-63 into the Basin Plan: “Water Bodies within the basins that do not have beneficial uses designated in Table II-1 are assigned MUN designations *in accordance with* the provisions of State Water Board Resolution No. 88-63 which is, by reference, a part of this Basin Plan.” (*Id.* at p. II-2.01, emphasis added.) Moreover, the Basin Plan reads: “In making any exemptions to the beneficial use designation of MUN, *the Regional Board will apply the exceptions* listed in Resolution 88-63.” (*Ibid.*, emphasis added.)

The agricultural drain to which the City discharges does not have a beneficial use designation in Table II-1 of the Basin Plan. (Tentative Order at p. 5; see Basin Plan at pp. II-5.00 to II-8.00.) Therefore, the Basin Plan directs the Regional Water Board to consider the agricultural drain’s beneficial uses on a case-by-case basis. In so doing, the Basin Plan requires that the Regional Water Board designate unidentified water bodies as MUN “in accordance with” Resolution No. 88-63, which includes the self-implementing exception at issue. (Basin Plan at p. II-2.01.) The Basin Plan incorporates Resolution No. 88-63 without qualification, and Resolution No. 88-63 directs Regional Water Boards not to apply the MUN designation to certain agricultural drains. Therefore, the plain language of the Basin Plan requires the Regional Water Board to apply Resolution No. 88-63’s exception for waters in an agricultural drain in this case absent a Basin Plan amendment.

B. The Tentative Order Should Express the WQBEL for Arsenic as an Annual Average and Include an Associated Compliance Schedule

The Tentative Order contains a final WQBEL for arsenic of 10 micrograms per liter (µg/L) expressed as an average monthly effluent limitation. (Tentative Order at p. 10.) The WQBEL should be expressed as an *annual average* rather than a monthly average. The basis for the WQBEL is the primary maximum contaminant level (MCL) for arsenic of 10 µg/L adopted by the Department of Public Health to *protect people from long-term exposure* to arsenic. (*Id.* at p. F-35.) Where applicable, WQBELs for constituents identified in the California Toxics Rule (CTR) generally must be stated as average weekly and average monthly limitations. (40 C.F.R. § 122.45(d)(2).) The general CTR rule is not applicable in this case, as the CTR lists arsenic with regard to aquatic life—not human health. (40 C.F.R. § 131.38.) The WQBEL is based on the MCL, not the CTR, and therefore an annual average limitation is appropriate for the City’s discharge.

Further, the cease and desist order (CDO) proposed for adoption with the Tentative Order finds that the City cannot immediately comply with the WQBEL and thus specifies interim effluent limitations and a time schedule for compliance. (CDO at pp. 2, 7, 8-9.) Consistent with the State Water Resources Control Board’s compliance schedule policy, the Regional Water Board may include the compliance schedule in the

Tentative Order. The arsenic MCL took effect in November 2008,¹ and the arsenic WQBEL is a new, more stringent numeric effluent limitation based on a water quality objective adopted after September 1995. (See CDO at pp. 2, 4, 7; Resolution No. 2008-0025, *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* at pp. 3-4.).

Thank you for considering our comments and request for modification of the Tentative Order. If you have any questions or we can be of further assistance, please contact me at (530) 268-1338.

Sincerely,



Debbie Webster
Executive Officer

cc: Bill Lewis, City of Live Oak
Pamela Creedon, Central Valley Regional Water Quality Control Board

¹ See Maximum Contaminant Levels and Regulatory Dates for Drinking Water, U.S. EPA v. California, Nov. 2008, <http://www.cdph.ca.gov/certlic/drinkingwater/Documents/DWdocuments/EPAandCDPH-11-28-2008.pdf> (as of Aug. 26, 2010).